

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DURANT TISDALE,

Plaintiff,

v.

CITY OF PHILADELPHIA et al.

Defendants.

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**Civil Action
No. 15-5209**

**DEFENDANTS' ANSWER, WITH AFFIRMATIVE DEFENSES,
TO PLAINTIFF'S AMENDED COMPLAINT**

Defendants City of Philadelphia, Police Officer Timothy Gibson and Police Officer David Sherwood (hereinafter "Answering Defendants"), by and through its undersigned counsel, hereby respond to Plaintiff's Complaint as follows:

1. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
2. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
3. The allegations as to Plaintiff's residence pertain to parties other than the Answering Defendant and constitute conclusions of law and /or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

4. Admitted in part, denied in part. It is admitted that the City of Philadelphia is a municipal corporation duly organized and operating under the rules and regulations set forth to them by the Commonwealth of Pennsylvania. The remaining allegations in this paragraph are denied.
5. Admitted only that Timothy Gibson is a resident of Pennsylvania and employed as a Police Officer by the City of Philadelphia. The remaining allegations are denied.
6. Admitted only that David Sherwood is a resident of Pennsylvania and employed as a Police Officer by the City of Philadelphia. The remaining allegations are denied.
7. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
8. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
9. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
10. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

11. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
12. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
13. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
14. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
15. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
16. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
17. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

18. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
19. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
20. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
21. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
22. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
23. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
24. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

COUNT I

25. Answering Defendants incorporate by reference, their answers to paragraphs 1 through 24, inclusive, as though fully set forth herein.
26. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
27. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
28. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
29. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
30. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

COUNT II

31. Answering Defendants incorporate by reference, their answers to paragraphs 1 through 30, inclusive, as though fully set forth herein.
32. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

33. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
34. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
35. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
36. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
37. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

COUNT III

38. Answering Defendants incorporate by reference their answers to paragraphs 1 through 37, inclusive, as though fully set forth herein.
39. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

40. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

41. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

COUNT IV¹

42. Answering Defendants incorporate by reference their answers to paragraphs 1 through 41, inclusive, as though fully set forth herein.

43. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

JURY DEMAND

Answering Defendants demand a jury trial in this action.

WHEREFORE, the Answering Defendants deny liability on the cause of actions declared herein, and demand judgment in their favor plus interest and costs.

Respectfully Submitted,

Date: December 29, 2015

/s/ Aaron Shotland
Aaron Shotland
Pa. Attorney ID No. 205916
City of Philadelphia Law Department
1515 Arch Street, 14th Floor
Philadelphia, PA 19102

¹ Plaintiff's has two Count IIIs in his Amended Complaint.

(215) 683-5434
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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Answering Defendants assert all of the defenses, immunities, and limitations of damages available to them under the “Political Subdivision Tort Claims Act” and aver that Plaintiff’s remedies are limited exclusively thereto. Act of Oct 5, 1980, No. 142, P.L. 693, 42 Pa. C.S.A. § 8541 et seq.

THIRD AFFIRMATIVE DEFENSE

The Plaintiff’s claims are barred by the doctrine of qualified immunity because, at all times material hereto, the individual defendants were carrying out their duties in a proper and lawful manner, and in the exercise of good faith.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred by the applicable Statute of Limitations.

FIFTH AFFIRMATIVE DEFENSE

The plaintiff’s claims are barred, in whole or in part, to the extent that he has failed to take reasonable measures to mitigate any or all damages.

SIXTH AFFIRMATIVE DEFENSE

The plaintiff’s claims are barred, in whole or in part, insofar as Answering Defendants’ purported actions or omissions were not the proximate cause of any alleged injury, loss, or damage incurred by the plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

At all times material to this civil action, Answering Defendants have acted in a

reasonable, proper, and lawful manner.

WHEREFORE, the Answering Defendants deny liability on the cause of actions declared herein, and demand judgment in their favor plus interest and costs.

Respectfully Submitted,

Date: December 29, 2015

/s/ Aaron Shotland

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CERTIFICATE OF SERVICE

I, Aaron Shotland, Attorney for Answering Defendants, certify that on this date, a true and correct copy of the Defendants' Answer, with Affirmative Defenses, to Plaintiff's Complaint was filed via the Court's electronic filing system and is available for downloading.

Date: December 29, 2015

/s/ Aaron Shotland

Aaron Shotland

Pa. Attorney ID No. 205916

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